



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 300, 600, and 665

[Docket No. 130708597-4380-01]

RIN 0648-BD46

Western Pacific Pelagic Fisheries; U.S. Territorial Catch and Fishing Effort Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final specifications; effectiveness of collection-of-information requirements.

SUMMARY: This final rule implements a management framework for specifying catch and effort limits and accountability measures for pelagic fisheries in the U.S. Pacific territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). Using the established framework, NMFS is also specifying a catch limit of 2,000 metric tons (mt) of longline-caught bigeye tuna for each territory for 2014. A territory may allocate up to 1,000 mt of that limit to eligible U.S. longline fishing vessels. This final rule also makes several technical administrative changes to the regulations and announces the effectiveness of collection-of-information

requirements. This action is consistent with international objectives of ending overfishing of bigeye tuna, while allowing for the limited transfer of available catch limits between U.S participating territories and eligible U.S. fisheries, consistent with the conservation requirements of the bigeye tuna stock.

DATES: This final rule and final specifications are effective October 24, 2014.

The deadline to submit a specified fishing agreement for review pursuant to § 665.819(b)(3) is [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may review the background and details of this action in Amendment 7 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific. You may obtain a copy of Amendment 7 and supporting documents, identified by NOAA-NMFS-2012-0178, from the Federal e-Rulemaking Portal, [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0178](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0178), or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, [www.wpcouncil.org](http://www.wpcouncil.org).

You may submit written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845

Wasp Blvd. Bldg. 176, Honolulu, HI 96818, and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries Division, 808-725-5176.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the pelagic fisheries of American Samoa, Guam, the CNMI, and Hawaii under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). The Council recommends conservation and management measures for NMFS to implement under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Certain pelagic fish stocks, including tunas, are also subject to conservation and management measures cooperatively agreed to by the Western and Central Pacific Fisheries Commission (WCPFC), an international regional fisheries management organization of which the United States is a member. The WCPFC has jurisdiction over fisheries harvesting highly migratory species on the high seas in the western and central Pacific Ocean, including pelagic fish stocks managed under the FEP. Pursuant to WCPFC Conservation and Management Measure (CMM) 2012-01, NMFS implemented the 2014 longline catch limit for bigeye tuna of 3,763 mt for U.S. vessels in the western and central Pacific (78 FR 58240, September 23, 2013). The limit does not apply to vessels in the longline fisheries of

the U.S. participating territories to the WCPFC, that is, American Samoa, Guam, or the CNMI.

Section 113 of the Consolidated and Further Continuing Appropriations Act of 2012, as amended, (Section 113) directed the Council to amend the FEP to authorize U.S. participating territories to use, assign, allocate, and manage their catch and effort limits for highly migratory fish stocks through agreements with U.S. vessels permitted under the FEP. Consistent with Section 113, which has now lapsed, the Council transmitted Amendment 7 on December 23, 2013. The Secretary of Commerce approved Amendment 7 on March 28, 2014. This final rule and associated final specifications implement conservation and management measures described in Amendment 7. This final rule is consistent with the WCPFC CMM 2013-01 objectives of ending overfishing of bigeye tuna, while allowing for the limited transfer of available quota between U.S participating territories and eligible U.S. fisheries. Although individual catch limits do not apply to the U.S. participating territories under CMM 2013-01, NMFS is implementing longline catch limits for bigeye tuna for the territories to ensure sustainable management, and to limit the overall mortality of bigeye tuna in the region. This rule establishes accountability measures for attributing and restricting catch and fishing effort towards territorial limits, including catches and fishing effort under

the territory agreements. Annual review and action by the Council and NMFS will ensure that any transfer of quota is consistent with the conservation requirements of the stock.

#### Final Rule

This rule implements the following:

- A framework consistent with WCPFC conservation and management measures for specifying catch or fishing effort limits and accountability measures for pelagic fisheries in the U.S. participating territories;
- Authorization for territories to enter into specified fishing agreements with U.S. fishing vessels permitted under the FEP, and to allocate to those vessels a specified portion of the territory's catch or fishing effort limit, as determined by NMFS and the Council;
- Criteria that any specified fishing agreements must satisfy, and the procedures for reviewing such agreements; and
- Accountability measures for attributing and restricting catch and fishing effort toward specified limits, including catches and fishing effort made by vessels in the agreements.

Under the framework process, the Council will review existing and proposed catch or effort limits and the portion available for allocation at least annually to ensure consistency with WCPFC decisions, the FEP, the Magnuson-Stevens Act, and other applicable laws. Based on this review, at least annually, the Council will recommend to NMFS whether such catch or effort limit or the portion available for allocation should be approved for the next fishing year. NMFS will review all Council

recommendations and, if determined to be consistent with WCPFC decisions, the FEP, the Magnuson-Stevens Act, and other applicable laws, will approve the Council's recommendations. If NMFS determines that a Council recommendation is inconsistent with WCPFC decisions, the FEP, the Magnuson-Stevens Act, or other applicable laws, NMFS will disapprove the recommendation. If NMFS disapproves a catch or fishing effort limit specification or allocation limit, or if the Council recommends and NMFS approves no catch or fishing effort limit specification or allocation limit, then no specified fishing agreements would be authorized for the fishing year covered by such action.

#### 2014 Bigeye Tuna Catch Limit

NMFS is using the framework process to specify a longline bigeye tuna catch limit of 2,000 mt for each U.S. participating territory. Additionally, NMFS specifies that each territory may allocate up to 1,000 mt of that limit to U.S. longline fishing vessels based in other U.S. participating territories or in Hawaii, and identified in a specified fishing agreement. NMFS will monitor catches of longline-caught bigeye tuna, including catches made under specified fishing agreements, and restrict catches, as appropriate, using the accountability measures described in this final rule. The longline bigeye tuna catch limit specifications are effective for the 2014 fishing year, which began on January 1, 2014.

The deadline to submit a specified fishing agreement for review pursuant to § 665.819(b)(3) is [insert date 30 days after date of publication in the FEDERAL REGISTER].

Additional background information on this final rule and the final bigeye tuna catch specification is contained in the preamble to the proposed rule and proposed specifications (79 FR 1354, January 8, 2014), and is not repeated here.

#### Comments and Responses

On January 8, 2014, NMFS published a proposed rule and proposed specifications, and request for public comments (79 FR 1354); the comment period ended February 24, 2014. NMFS received comments from individuals, government agencies, and non-governmental organizations, and responds as follows:

Comment 1: Several commenters support NMFS assistance to U.S. Pacific island territories.

Response: Comment noted; this final rule requires that any fishing agreements between the U.S. participating territories and U.S. vessels include support for fisheries development projects in the territories and as described in their marine conservation plans.

Comment 2: The Hawaii-based longline fleet is already subject to a bigeye tuna catch limit, and this proposed action would allow the fleet to catch up to an additional 3,000 mt of bigeye tuna. There needs to be a reduction in bigeye tuna

fishing pressure to regain sustainable levels, so the territories should not be allowed to allocate up to 1,000 mt of their 2,000-mt bigeye tuna catch limit to the Hawaii fleet.

Response: Section 113, as amended, directed the Council to prepare and transmit an amendment and regulations implementing a process for transferring U.S. territory quota for highly migratory species to eligible U.S. fishing vessels. This final rule implements this process consistent with the requirements of the Magnuson-Stevens Act. This action is consistent with WCPFC CMM 2013-01, and other applicable laws, including the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and the NMFS final rule published September 23, 2013 (78 FR 58240), which maintains the U.S. limit for longline-caught bigeye tuna in the western and central Pacific Ocean (WCPO) at 3,763 mt in 2014.

The management framework provides for the domestic implementation of catch or fishing effort limits for the longline fisheries in the U.S. territories, while allowing for the limited transfer of quota to U.S. fisheries, consistent with the conservation and management needs of the stock. One of the objectives of CMM 2013-01 is to reduce fishing mortality on bigeye tuna and eliminate overfishing. This rulemaking includes accountability measures to ensure consistency with this



international objective, as well as with the Magnuson-Stevens Act requirement to prevent overfishing.

This final rule establishes a framework that allows each territory to allocate a portion of its catch or fishing effort limit to U.S. fishing vessels with a valid Federal permit issued under the FEP through a specified fishing agreement. The amount available for allocation under agreements is subject to annual review to ensure consistency with WCPFC decisions, the FEP, the Magnuson-Stevens Act, and other applicable laws. If the Council does not recommend a specification, or recommends an amount that, in light of the best scientific information available, is inconsistent with the conservation and management needs of the stock or decisions of the WCPFC, then NMFS will not approve specified fishing agreements for that year.

Under this framework process, NMFS is also specifying an annual limit of 2,000 mt of bigeye tuna caught with longline fishing gear in the WCPO for each territory. CMM 2013-01 does not establish an individual limit on the amount of bigeye tuna that may be harvested annually in the WCPFC Convention Area by Small Island Developing States (SIDS) and participating territories (PTs) of the WCPFC, including American Samoa, Guam, and the CNMI. Although Paragraph 41 of CMM 2013-01 limits members that harvested less than 2,000 mt of bigeye tuna in 2004 to no more than 2,000 mt for each of the years 2014 through

2017, SIDS and PTs are not subject to the 2,000-mt limit. As part of this action to allow for the limited transfer of quota from the U.S territories to U.S. pelagic longline fisheries, NMFS is establishing 2,000-mt limits for each U.S. territory. These overall limits, in conjunction with the 1,000-mt limit that each territory may allocate, will help ensure sustainability of the stock.

In 2011 and 2012, under Section 113, American Samoa and the Hawaii Longline Association (HLA) entered into an agreement to attribute longline catch to American Samoa in exchange for funds deposited in the Sustainable Fisheries Fund to support fishery development projects in the territories. NMFS attributed 628 mt of bigeye tuna caught by HLA vessels under the agreement in 2011 to American Samoa. In 2012, NMFS attributed 771 mt of bigeye tuna to American Samoa. In 2013, the CNMI and HLA entered into a Section 113 agreement. In that year, NMFS attributed to the CNMI 501 mt of bigeye tuna caught by HLA vessels. Based on this history, and the requirement in this rule that no vessel operate under more than one specified fishing agreement at a given time, NMFS anticipates that no more than 1,000 mt of bigeye tuna would be transferred annually under specified territory fishing agreements. NMFS does not expect any significant change in fishing effort than had occurred under baseline conditions in 2011, 2012, and 2013. Finally, as explained above and in

Amendment 7, the rule does not impede the WCPFC objective of ending overfishing of bigeye tuna.

See also the response to Comment 5.

Comment 3: The proposed rule would have negative effects beyond just the target species, especially for threatened marine animals such as sharks, sea turtles, and billfish, and would increase shark bycatch each year.

Response: NMFS anticipates that fishing effort by the Hawaii deep-set longline fishery, a limited entry fishery with a relatively fixed number of active permits, will remain similar to baseline fishing years under Section 113 (2011, 2012, and 2013). Impacts to protected species are expected to remain within the range analyzed in the 2013 environmental assessment (EA). Moreover, in a Biological Opinion dated September 19, 2014, NMFS concluded that the continued operation of the Hawaii deep-set longline fishery under effort levels expected under the proposed action is not likely to jeopardize the continued existence of ESA-listed humpback whales, sperm whales, the MHI insular false killer whale distinct population segment (DPS), North Pacific loggerhead DPS, leatherback sea turtles, olive ridley sea turtles, green sea turtles, and the Indo-west Pacific scalloped hammerhead DPS. NMFS based this conclusion on a careful assessment of the effects of the action, together with the environmental baseline and the cumulative effects.

Amendment 7, which this final rule implements, presents information and impacts to target and non-target species. Catches of non-target species under this rule are commensurate with the level of fishing effort for bigeye tuna. With respect to Western and Central North Pacific (WCNP) striped marlin, NMFS does not anticipate this action to result in catches that exceed the U.S. limit for WCPO striped marlin under CMM 2010-01. Each cooperating member, non-member, and participating territory of the WCPFC is subject to a 20-percent reduction of the highest catch of North Pacific striped marlin between 2000 and 2003. The measure provides that each flag/chartering member, cooperating non-member, and participating territory (CCM) shall decide on the management measures required to ensure that its flagged/chartered vessels operate under the specified catch limits. CMM 2010-01 provides exemptions to catch limits for the SIDS and PTs. The WCPO striped marlin limit applicable to the U.S. (i.e., Hawaii) fisheries in 2013 and beyond is 457 mt annually, which accounts for the 20 percent reduction agreed to in CMM 2010-01. U.S. catch has been below levels agreed to by the WCPFC. Table 12 in Amendment 7 describes recent catches of North Pacific striped marlin by U.S. longline vessels, including catches attributed under fishing agreements. Historical average landings from 2008-2012 are only 60 percent of the U.S. limit under CMM 2010-01 for 2013 and beyond. Although a non-target

species caught while targeting bigeye tuna and swordfish, striped marlin are highly marketable and longline fishermen typically discard less than five percent.

NMFS has no information that impacts on sharks will increase under the proposed action. With the exception of mako and thresher sharks that are sometimes retained for market in low quantities, U.S. longline fishermen based in the Pacific Islands release most sharks alive.

See also the response to Comment 5. Under this action, NMFS expects fishing effort, expected catch rates, and total catches for target and non-target species to remain within the range observed in 2011, 2012, and 2013 under Section 113.

Comment 4: This proposed rule would allow the U.S.A. to increase its catch of bigeye tuna, a species already experiencing overfishing, by 80 percent and ignore its internationally-established quota agreed to during the most recent meeting of the WCPFC. The proposed rule ignores scientific advice calling for a 39-percent reduction in bigeye tuna fishing mortality from 2004 levels to end overfishing and threatens the future of the fishery by allowing the U.S. Hawaii based longline fleet to catch up to an additional 3,000 mt of bigeye tuna allocated to American Samoa, Guam, and the CNMI. This catch would be in addition to the 3,763 mt of U.S quota just agreed upon at the WCPFC meeting in December 2013, raising

the U.S. allowable catch by 80 percent for a species in dire need of catch reductions. Furthermore, because longline fishing for bigeye tuna by U.S. Pacific territories has historically remained well below 1,000 mt per year, the proposed rule would result in a net increase in fishing effort within the WCPFC area rather than a mere transfer of effort from one CCM to another.

Response: NMFS has already implemented the 3,763 mt catch limit for longline-caught bigeye tuna for the United States for 2014 (see 50 CFR 300.224), and will implement the U.S. catch limits specified in CMM 2013-01 for subsequent years in one or more separate rulemakings, as appropriate. This final rule allows for the limited transfer of available quota from territories to eligible U.S. longline fishermen, for example, after the U.S. WCPO limit for bigeye tuna has been reached, while applying precautionary measures to ensure that international objectives to end overfishing are not undermined.

This final rule is not likely to result in an additional 3,000 mt bigeye mortality by U.S. fishing vessels because it includes accountability measures that prohibit any vessel from operating under more than one specified fishing agreement at a time. In addition, no U.S. territory may assign more than 1,000 mt of bigeye tuna to U.S. vessels operating under specified fishing agreements in 2014. Consistent with landings in 2011,

2012, and 2013, NMFS anticipates that bigeye catch under specified fishing agreements will be less than 1,000 mt.

See also the response to Comments 2 and 5.

Comment 5: The proposal to create a framework to allow the transfer of catch or fishing effort from U.S. Pacific territories to the U.S. Hawaii-based longline fleet would allow for the continued overfishing of bigeye tuna in the WCPO, run counter to scientific advice that has been consistently presented for over a decade, and cause the U.S.A. to undermine WCPFC conservation objectives.

Response: This final rule and 2014 specification provides for a 1,000-mt transferable limit for each territory under a specified fishing agreement with U.S. vessels. Although this rule allows for such transfers, accountability measures do not allow fishermen to operate under more than one territorial agreement at a time. Accordingly, NMFS anticipates that actual catches will be similar to fishing operations under Section 113 from 2011 through 2013, and result in no more than 1,000 mt of bigeye tuna catch annually under territory agreements. The management framework provides that the Council will review and recommend, and NMFS will specify, territory catch or fishing effort and transferable limits on an annual basis, regardless of whether it proposes a single or multi-year specification. Accordingly, a multi-year specification that fails to prevent

overfishing consistent with WCPFC conservation and management measures will be subject to disapproval. In the event of disapproval of the specification, no fishing agreements will be approved for the fishing year.

In 2011, 2012, and 2013, when there were no limits on the amount of bigeye transferred under Section 113 agreements, 628 mt, 771 mt, and 501 mt, respectively, of bigeye tuna were transferred to a U.S. territory. Based on historical operations under Section 113, NMFS anticipates that up to 1,000 mt of bigeye tuna could be assigned under the territory agreement(s) in any one year. As documented in the EA, catches by Hawaii and territory longline fisheries, when combined with U.S. WCPO longline limit for bigeye tuna of 3,763 mt per year (which will be reduced in 2015 and again in 2017) would not impede the CMM 2013-01 objective of ending overfishing on bigeye tuna.

See also the response to Comments 2, 3, and 12.

Comment 6: Increased fishing effort associated with the increase in catch of bigeye tuna will impact yellowfin and albacore tunas and oceanic white-tip and silky sharks that are species of concern within the WCPFC Convention Area and violate CMMS 2013-01, 2005-03, 2011-04, and 2013-08. NMFS and the Council should focus on leading conservation efforts, not circumventing the catch limits the WCPFC has put in place. To sustain the bigeye tuna fishery, it is imperative that U.S.



actions promote and support the control of fishing mortality based on best available science and implementation of sustainable measures.

Response: Section 113 directed the Council to prepare an amendment and regulations that establish a process for transferring quota for highly migratory species from U.S. participating territories to eligible U.S. longline fishing vessels. This final rule implements a framework process for authorizing the limited transfer of highly migratory species quota, consistent with the Magnuson-Stevens Act and WCPFC decisions. This final rule is consistent with CMM 2013-01 for longline-caught yellowfin tuna and the fishing effort limits for albacore under CMM 2005-02. CMM 2013-01 provides that CCMS should not increase catches of yellowfin tuna by their longline vessels. This final rule does not increase harvest pressure on yellowfin tuna, but merely provides a mechanism for continuing baseline effort levels from 2011 to 2013. Regarding the CMM for North Pacific albacore, vessels in the Hawaii deep-set longline fishery do not fish for albacore north of the equator, so that fishery is not subject to the fishing effort limit. This final rule does not undermine the WCPFC's measures for silky sharks or oceanic whitetip sharks under CMMs 2013-08 and 2011-04, respectively. These measures, which currently are published as proposed regulations, require that fishermen release these

sharks with as little harm as possible; the measures do not require limits on fishing effort in any fishery.

NMFS must give priority to the conservation needs of the stock and will allow the transfer of quota only to the extent that it is consistent with Magnuson-Stevens Act and international objectives to end overfishing on bigeye tuna. As explained in Amendment 7 and supported by existing data and model projections, the expected transfer of 1,000 mt in 2014 would not delay or impede WCPFC objectives of ending overfishing of bigeye tuna.

Comment 7: To secure the future of bigeye tuna populations, the WCPFC placed a specific limit on the U.S. longline catch of 3,763 mt for 2014, and decreased this amount slightly for 2015 and 2016. The proposed rule creates a loophole to this limit, which undoes the modest reductions the commission requires of U.S. longline vessels.

Response: This final rule includes safeguards to ensure that any transfer of quota does not impede WCPFC conservation and management decisions, including measures to end overfishing of bigeye tuna.

See also the response to Comments 2 and 5.

Comment 8: NMFS should include the forecast of our changing climate in all of its policies. The impact of global warming

will greatly impact animals worldwide. There are already signs of failing species as their food supplies disappear.

Response: NMFS and the Council addressed climate change, as well as other cumulative effects, and their impact upon pelagic fisheries in Amendment 7 and associated EA. Climate change impacts on marine ecosystem processes are not well understood. It is particularly challenging to accurately predict climate change effects associated with actions, such as here, that are of a short-term nature.

Comment 9: We must take action now before overfishing significantly reduces the bigeye tuna populations, jeopardizing commercial fisheries and the marine environment.

Response: The United States, through the Departments of State and Commerce, continues to work cooperatively with regional organizations like the WCPFC to address the conservation needs of bigeye and other highly migratory stocks. NMFS remains committed to achieving the necessary reductions in bigeye mortality that will end overfishing. This rule establishes a framework that would provide U.S. fisheries with limited access to quota that otherwise is available to the U.S. participating territories, consistent with conservation and management objectives of the WCPFC and Magnuson-Stevens Act. Amendment 7 analyzed impacts of the action on fisheries, fishery participants, and the marine environment consistent with

international conservation and management measures, the Magnuson-Stevens Act, and other applicable laws. The effects of the action on these resource components did not result in the identification of any significant impacts.

See also the response to Comment 2.

Comment 10: The proposed action appears to specify catch limits for longline-caught bigeye tuna of 2,000 mt per year for each territory, of which 1,000 mt may be transferred annually under agreements consistent with the FEP and other applicable laws to eligible U.S. vessels.

Response: These final specifications apply only in 2014. The management framework implemented by this rule requires the Council to review any proposed and existing catch or fishing effort limits and allocation limits at least annually to ensure consistency with the FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws. The Council will then recommend the amount of catch or effort limit and/or allocation limit, if any, for the next fishing year. NMFS reviews the recommended limits for consistency with all applicable laws and WCPFC CMMs and, if consistent, NMFS will approve the recommendation. If NMFS disapproves the recommendation, or if the Council recommends no allocation limit, then no specified fishing agreements will be approved for that fishing year. This process did not change from the proposed rule.

Comment 11: The statutory authority for territories to use, assign, allocate, and manage catch limits of highly migratory fish stocks in the way proposed (under Section 113) expired on December 31, 2013. There is, accordingly, neither congressional direction nor statutory authority to implement the proposed rule.

Response: The Council transmitted Amendment 7 on December 23, 2013, consistent with Section 113 (as amended by Section 110 of the Department of Commerce Appropriations Act), and the Magnuson-Stevens Act. NMFS published the Notice of Availability for Amendment 7 on December 30, 2013. Although Section 113 (now lapsed) required the Council to take specific action to develop and transmit an amendment and regulations to implement this framework, Section 113 did not convey substantive authority that did not already exist under the Magnuson-Stevens Act, WCPFC Implementation Act, and other applicable laws. The Council and NMFS have authority under the Magnuson-Stevens Act, in response to a Congressional directive, to develop measures that establish a territory's limited transferable interest in fishery resources, where necessary and appropriate for the conservation and management of the fishery.

Comment 12: Despite acknowledging that measures must satisfy the conservation and management objectives of the Magnuson-Stevens Act in order to ensure the continued

sustainability of the target stocks, the proposed management framework fails to include goals of ending overfishing and rebuilding stocks when setting catch limits. The proposed action fails to address the ecosystem consequences of bycatch of fish, sharks, turtles, and marine mammals in the Hawaii longline fisheries in violation of the Magnuson-Stevens Act. The framework in the Council's preferred alternative would allow establishment of catch limits even in the absence of WCPFC limits on SIDS and PTs, but the criteria for how the Council will establish those limits are significantly more permissive than allowed by the Magnuson-Stevens Act. Rather than following the National Standards in section 301, the Council would set catch limits after considering the status of highly migratory species stocks, the needs of fishing communities dependent upon the particular fishery resource, and any other relevant conservation and management factors. Because those limits are set under the Magnuson-Stevens Act and its implementing regulations, they should be based on best available science, specifically the status of the stock, and designed to result in a high probability of ending overfishing in as short a period as possible and/or designed to rebuild stocks in as short a period as possible.

Response: The proposed action is consistent with the Magnuson-Stevens Act, which includes the National Standards

referenced by the commenter, and other applicable laws. However, NMFS disagrees with the commenter's implicit assumption that any catch limit must have a high probability of ending overfishing and rebuilding stocks in as short a period as possible. Although the western pacific bigeye stock is currently subject to overfishing, it is not overfished as defined by NMFS status determination criteria under the Pelagic FEP. Further, the Council and NMFS are not required to develop annual catch limits for internationally-managed stocks (16 U.S.C. 1853 note). Given the relative impact of the U.S. on western pacific bigeye tuna, applying limits to U.S. fishermen on only the U.S. portion of the catch or quota would not lead to ending overfishing and could unfairly disadvantage U.S. fishermen (74 FR 3178 and 3199, January 16, 2009). Accordingly, when evaluating whether a conservation and management action proposed under the Magnuson-Stevens Act prevents overfishing of a stock that is subject to international management, NMFS considers whether the action is consistent with the conservation objectives of the applicable decision of the regional fishery management organization.

Amendment 7 addresses impacts to target species including consideration whether anticipated catch levels will undermine conservation and management objectives to end overfishing on WCPO bigeye tuna. There are accountability measures in place to account for any changes in stock status or other factors. The

Council and NMFS will use the best scientific information available to review and specify catch or fishing effort limits or allocation limits on an annual basis, taking into account catches of other target and non-target species, including consistency with the Magnuson-Stevens Act and other applicable laws.

See also the response to Comments 2, 3, and 5.

Comment 13: NMFS should adopt Alternative 2 in the EA associated with Amendment 7 wherein no authority exists for U.S. participating territories to assign, allocate, and manage catch limits of bigeye tuna as was done in 2012 and 2013, establish a framework for setting catch limits based on the status of the stock - designed to result in a high probability of ending overfishing in as short a period as possible - and no higher than allowed under international conservation measures, and prepare an environmental impact statement to analyze impacts of the action beyond 2020, the impact of longline overfishing on ecosystem structure per Polovina et al. (2013), and the long-term impacts and contingencies if bigeye tuna overfishing continues.

Response: See response to Comment 11 regarding statutory authority. This action includes appropriate management safeguards, including annual review and action on territory and allocation limits based on the best scientific and commercial



information available, which will ensure that this limited transfer of available quota will not undermine conservation objectives. The EA provides a comprehensive description of the affected environment and analysis of the action through a reasonable range of alternatives. Based on the EA, including consideration of precautionary measures that provide for annual Council review and NMFS action, with supporting NEPA and ESA analyses, NMFS believes that the environmental impacts associated with this action are not significant as to require the preparation of an EIS. In particular, NMFS is satisfied that safeguards, including the availability of annual review and prompt corrective action, are sufficient to respond to any change in the conservation needs of the stock and to keep impacts of this action to a minimum.

Highly migratory species, including bigeye tuna, are subject to international management measures agreed to by the WCPFC, to which the U.S.A. is a member. The U.S. territories are authorized to harvest specified levels of highly migratory species. This action would allow for the limited transfer of bigeye tuna and potentially other highly migratory species between territories and U.S. vessels consistent with international measures that would end overfishing within target dates set out by the WCPFC. The EA analyzed the impacts of the specified territory catch limits for bigeye tuna, not only in

2014 when the limits are in effect, but also through 2017 and 2020 when based on existing management measures and the best scientific information available, overfishing of bigeye tuna is expected to end. In addition, the EA analyzed various catch levels of bigeye tuna under agreements, including the most likely scenario that the territories would assign 1,000 mt to U.S. vessels, based on the latest stock assessment of bigeye tuna in the WCPO (2011), along with other stock assessments and information for non-target and protected marine species.

The stock status trend in the Tuna Management Simulator (TUMAS) model (developed by the Secretariat of the Pacific Community, the science provider to the WCPFC) using recent average recruitment of WCPO bigeye tuna, suggests further improvements in stock conditions by 2017 and 2020. The 2014 allocation allows each territory to transfer no more than 1,000 mt. In the future, if the best scientific information available and environmental analyses indicate that stock conditions have not improved as projected, the Council and NMFS would likely approve a smaller transferable allocation, or none at all. Further, the annual review process allows the Council and NMFS to take corrective action, as appropriate, to meet the conservation needs of the stock, non-target stock, or protected species.

Comment 14: Increasing U.S. longline fishing effort, including the Hawaii deep-set fishery for which discards now amount to 40 percent of the catch, will increase fishing mortality for non-target species, violating international and U.S. prohibitions on bycatch of vulnerable species. While Hawaii's shallow-set longline fishery has 100 percent observer coverage, the other longline fisheries for which the rule sets bigeye tuna catch limits have far less. All should be required to have 100 percent observer coverage. The animals subjected to higher mortality as a result of the proposed rule include yellowfin tuna, North Pacific albacore, silky sharks, and oceanic whitetip sharks. Endangered species at greater risk of [mortality] from fishing include, but are not limited to, leatherback and loggerhead sea turtles, sperm whales, Main Hawaiian Islands insular false killer whales, and short-tailed albatross. International and U.S. laws restrict the take of many of these species.

Response: The Hawaii deep-set longline fishery is observed at 20 percent coverage levels, well in excess of 5 percent required under WCPFC measures, and consistent with statistically reliable sampling methods for determining impacts on target and non-target stocks and protected species. Moreover, impacts to non-target species and protected species are expected to remain within those observed in 2011-2013 while the fishery operated

under Section 113, well within levels analyzed and authorized in relevant ESA, MMPA, and Magnuson-Stevens Act determinations.

See also the responses to Comments 3, 6, 22, and 23.

Comment 15: As evidenced by recent stock assessments of bigeye tuna in the Pacific, the status of bigeye tuna has reached a critical threshold where action to reduce fishing mortality should be implemented immediately.

Response: See the response to Comments 2 and 5.

Comment 16: Based on evidence that fishing negatively alters the ecosystem, and that the bigeye tuna population may soon no longer produce maximum sustainable yield for fishermen, NMFS should not allow increased U.S. bigeye tuna landings, but should prevent overfishing and analyze the consequences of not doing so, and act to reduce bycatch.

Response: The action is consistent with CMM 2013-01 objectives of ending overfishing of bigeye tuna, while allowing for the limited transfer of available quota between U.S. participating territories and U.S. fisheries. This action is consistent with international agreements, the Magnuson-Stevens Act, and controls catches of bigeye tuna by U.S. territorial longline fisheries. NMFS has already implemented the 2014 WCPFC longline catch limit for bigeye tuna of 3,763 mt for U.S. vessels in the WCPO. Under CMM 2013-01, individual catch limits do not apply to the U.S. participating territories, but NMFS is

taking this action to implement limits for longline-caught bigeye tuna for the territories to ensure sustainable management and to limit the overall mortality of bigeye tuna from fisheries of the United States and U.S. territories. This action establishes accountability measures for attributing and restricting catch and fishing effort towards territorial limits, including catches and effort made under territory fishing agreements. Annual review and action by the Council and NMFS will help ensure achievement of the WCPFC's conservation goals. If, based on the conservation needs of the stock, NMFS disapproves the Council's annual recommendation, or if the Council recommends and NMFS approves an allocation limit of zero, then no territory fishing agreements would be accepted for the year covered by that action.

See also the response to Comments 2, 5, and 19.

Comment 17: The proposed rule provides for the Council to take the lead on establishing catch limits for the territories, raising serious concerns about conflicts of interest. Hawaii fishermen's deposits into the Western Pacific Sustainable Fisheries Fund provide an incentive for the Council to set higher-than-sustainable catch limits for the U.S. territories. The Council financially benefits from high catch limits for the territories, which allow the territories to turn around and "sell" their allocations through the transfer agreements to

Hawaii longline vessels. In essence, the proposed rule establishes a system under which Hawaii fishermen pay the Council to fish above the limits in the WCPFC CMMs. Especially for a species undergoing overfishing, it is imperative that catch limits are science-based and proposed by a financially disinterested agency. The Magnuson-Stevens Act requires disclosure and recusal of voting Council members in decisions "which would have a significant and predictable effect on [their] financial interest." The novel situation that the rule proposes - in that a Council financially benefits from higher fish catch limits - is analogous to what Congress hoped to prevent by enacting the Magnuson-Stevens Act's disclosure and recusal provisions.

Response: This final rule is consistent with the process followed under Section 113 from 2011-2013, in which funds under specified fishing agreements were deposited into the Western Pacific Sustainable Fisheries Fund (SFF) for fishery development projects listed in the territory Marine Conservation Plans approved by the Secretary of Commerce. The Council accesses funds in the SFF through cooperative grant agreements consistent with federal grant requirements. However, under this action and the Magnuson-Stevens Act section 204(e), funds from the SFF may not be used to support Council activities or to fund Council operations. Furthermore, the Council does not establish minimum

funding levels for territory agreements--funding levels for a specified fishing agreement are negotiated between parties of the agreement.

The 2014 and any future annual specifications are subject to NMFS' approval, subject to consistency with the Magnuson-Stevens Act and WCPFC conservation and management objectives using the best scientific information available. To the extent that a Council member's financial interests may be affected by a decision to fund, or not to fund, a particular MCP project, the disclosure, voting, and recusal requirements of Magnuson-Stevens Act section 302(j) and 50 CFR 600.235 would apply.

Comment 18: Neither NMFS nor the Council provided a reasoned explanation based on best available science for the bigeye limit of 2,000 mt for U.S territories. In Amendment 7 and the EA, the discussion of Alternative 4 states that the Council will consider "the status of highly migratory species stocks, the needs of fishing communities...and any other relevant conservation and management factors" to develop catch limits, these criteria were not systematically applied to produce the Sub-alternatives 4(a) (no limit) or 4(b) (limit of 2,000 mt). The EA states that no more than 1,000 mt is likely to be transferred even though the proposed rule would allow a maximum of 3,000 mt to be transferred. Therefore, no need exists to set catch limits as high as 2,000 mt per territory. To set the limit

so far above the needs of fishing communities for a species undergoing overfishing encourages unsustainable and speculative development.

Response: Alternative 4 provides a description of the Council's preferred alternative for the management framework, that is, the process. Sub-alternatives 4(a) and 4(b) relate to the Council's recommendation to specify annual longline catch limits for bigeye tuna for the territories and limits on amounts available for allocation under agreements between the territories and U.S. vessels, that is, the specifications. Amendment 7 and the EA analyzed the status of target, non-target, and protected species, as well as the anticipated impacts from each alternative, including the preferred.

The Council based the 2,000-mt limit for each U.S. territory on past limits provided to WCPFC members that harvested less than 2,000 mt annually in previous CMMs (2008-01 and 2011-01), and which is currently set forth in paragraph 41 of CMM 2013-01. Paragraph 41 states that each member that caught less than 2,000 mt of bigeye in 2004 ensure that its catch does not exceed 2,000 mt in each of the next 4 years (2014, 2015, 2016, and 2017). However, paragraph 7 of CMM 2013-01 exempts SIDS and PTs from the 2,000 mt annual limit meaning that, under WCPFC decisions, these members are not subject to individual bigeye limits. This final rule would effectively remove that



exemption and make American Samoa, Guam, and the CNMI subject to 2,000 mt limits for 2014.

The 2,000 mt limits would allow for the continued development of domestic fisheries in the U.S. participating territories while ensuring that total bigeye tuna mortality by all U.S. and territory longline fisheries would not exceed a fixed amount. American Samoa has an existing longline fishery that catches bigeye tuna while targeting South Pacific albacore. If that fishery diversifies and targets other species, higher landings of bigeye tuna may result. Therefore, the total limit of 2,000 mt will allow territories to enter into fishing agreements with U.S. fisheries, while maintaining sufficient reserve quota for domestic development.

See also the responses to Comments 2 and 19.

Comment 19: NMFS and the Council should have analyzed the health of the bigeye tuna stock across the Pacific Ocean, acknowledge the remaining uncertainty regarding the future of the stock, and provide a measure for curtailing domestic development if a stock producing maximum sustainable yield fails to materialize in future years. In addition, the action should consider other fish that might substitute for bigeye tuna in the event yield declines and what the environmental consequences will be of transferring longline capacity of the U.S. territories and Hawaii to those species.

Response: The specified catch limit for bigeye tuna is effective for 2014 only. The Council may recommend that NMFS set appropriate catch or fishing effort limits and allocation limits for the territories' pelagic fisheries, including longline. Further, the framework includes mandatory precautionary measures to ensure that any limits are specified according to the best scientific information available, recognizing potential changes in stock status and international conservation and management measures and to ensure consistency with the conservation needs of the stock. The Council and NMFS will review any existing or proposed catch or fishing effort limit or transfer limit on an annual basis to ensure consistency with the FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws. The Council and NMFS will evaluate the environmental effects of any future catch or fishing effort limit or allocation limit that the Council recommends using the best scientific information available at the time in an appropriate NEPA analysis. In the event that the Council fails to recommend a specification, or recommends an amount that, in light of the best available scientific information, is inconsistent with the conservation and management needs of the stock, then NMFS will not approve specified fishing agreements for that year.

NMFS is satisfied that the process described above adequately accounts for scientific uncertainty and the

possibility that future stock projections may not align with observed trends. The Council and NMFS regularly review the status of pelagic fisheries in the region and will take future management action as warranted by the circumstances.

Amendment 7 and the EA analyzed comprehensively the impacts of territorial catch limits for bigeye tuna across the Pacific, not only in 2014 when the limits are in effect, but also through 2017 and 2020. In addition, the EA analyzed various catch levels of bigeye tuna under agreements, including the most likely scenario that the territories would assign up to 1,000 mt to U.S. vessels, based on the 2011 stock assessment of bigeye tuna in the WCPO (2011) and the 2013 assessment for the eastern Pacific Ocean, along with other stock assessments and information for non-target and protected marine species. In December 2014, the WCPFC is expected to review several stock assessment updates for highly migratory species, including a 2014 assessment of bigeye tuna in the WCPO. If approved by the WCPFC for management, NMFS and the Council would use these new assessments in reviewing and developing catch or fishing effort specifications in future years.

Finally, NMFS is unable to speculate whether other fish could substitute for bigeye tuna in the future if circumstances change, including the stock status of bigeye tuna. Moreover,

such consideration is outside the scope of this rule and the Council's action.

Comment 20: The EA misinterprets fisheries science by taking a short-term instead of a long-term view, and ignores both the serious consequences of continuing overfishing and the benefits gained from ending overfishing. Sibert et al. (2012), concerned that high fishing mortality will soon reduce bigeye tuna to fewer than are capable of producing maximum sustainable yield, have recommended policies to curtail mortality of juveniles and adults. For the EA to analyze impacts of the proposed action on bigeye tuna in only 2020, six years away, fails to account for the long-term benefits that the fishermen could realize by reducing fishing mortality now. In some places, the EA takes an even shorter view, analyzing the socioeconomic impacts in 2014, but not long-term impacts of continued overfishing. For example, the transfer agreements - which increase U.S. vessels' catch of bigeye tuna compared to the WCPFC limits on U.S. bigeye tuna catch - may provide unsustainable short-term benefits if bigeye tuna overfishing continues. The EA states that catches "of target and non-target species by U.S. longline fisheries would likely be lower by several hundred tons (e.g., bigeye tuna) to tens of tons (e.g., WCNP striped marlin) without arrangements." This short-term view excludes the potentially significant benefits from conservation

measures if fishing mortality were reduced now (i.e., catches could be far greater in 2030 without the arrangements). (See Sibert et al. 2012.) Instead, the EA analyzes only the short-term effects. To take the "hard look" that NEPA demands, statements in the EA like the one on page 38 - "Local markets and consumers would be limited in the fresh pelagic fish from the Hawaii longline fishery" if the Hawaii fishery closes before the year's end - must be counter-balanced with analysis of the potential for continued overfishing to cause bigeye tuna soon to be incapable of producing maximum sustainable yield. By artificially truncating its analysis, the EA fails to account for the threat to the long-term survival of the fishery posed by increasing fishery mortality through the transfer agreements.

Without transfer agreements - and the resulting increase in overfishing - catches of bigeye tuna could increase and catches of non-target fish could decrease. Ending overfishing would create both a healthier ecosystem and additional economic benefits for U.S. fishermen in the long-term. Given the significant environmental effects that may occur, NEPA compels NMFS to fully analyze the issue in an environmental impact statement.

Response: This action is consistent with, and would not impede, WCPFC conservation and management objectives to end overfishing on bigeye tuna. See also the response to Comment 4.

Amendment 7 used the Tuna Management Simulator (TUMAS) model to analyze the potential impacts on WCPO bigeye tuna under a variety of catch scenarios, including the level NMFS and the Council anticipate in 2014, that is, if up to 1,000 mt were assigned under a territory agreements and added to the U.S. WCPO bigeye tuna limit of 3,763 mt. Contrary to the implication raised in the comment, the EA did analyze the impact of no fishing agreements with U.S. participating territories, meaning that U.S. fisheries would harvest no more than 3,763 mt of bigeye tuna in 2014 and beyond.

Conservative analysis in Amendment 7 indicated that without any territory agreements, that is, assuming a constant catch of 3,763 mt of WCPO bigeye tuna (which does not account for further reductions in U.S. longline catch for bigeye tuna as agreed to in CMM 2013-01), and using 2010 fishing conditions as the baseline, overfishing of bigeye tuna would end by 2017, with a concomitant improvement in stock status. This projected improvement in the condition of WCPO bigeye tuna uses the recent average recruitment scenario, the better of two indicators of future recruitment levels as detailed in Amendment 7. The recent recruitment scenario reflects current conditions and conditions that are likely to prevail into the near future where bigeye tuna catches will be from a mixture of purse seine and longline fisheries.

The EA also analyzed the impact of 4,763 mt of bigeye tuna catch under the same recent average recruitment scenario. The analysis revealed virtually no change from the "no action" alternative in the status of bigeye tuna when projected to 2017 and 2020. Moreover, the simulated TUMAS projections also indicate an end to overfishing when the contribution of an additional 1,000 mt transferred under territory agreements, or 4,763 mt of WCPO bigeye tuna catch, is included and projected through 2017 and 2020. See also the response to Comment 20.

Sibert et al. (2012) evaluate historical effort of purse seine and longline fisheries and spatial management by the WCPFC and explore alternative conservation and management scenarios using a model-based approach for reducing and managing fishing mortality on bigeye tuna for guiding future conservation measures for tropical tunas. This action would not impede the objective of CMM 2013-01 to end overfishing on bigeye tuna in the WCPO as Amendment 7 details. Further, Sibert et al. (2012) note that there are no suitable models for forecasting fishing effort beyond extrapolating current fishing conditions more than a few years into the future and longer-term forecasts would require realistic and quantitative information on commercial fishing on a fleet-wide basis, that is, all foreign and domestic purse seine and longline vessels in the WCPO.

NMFS disagrees that it should decrease catches now in order to reap far greater bigeye catches in 2030. Under the Magnuson-Stevens Act, conservation and management measures must prevent overfishing while ensuring on a continuing basis the optimum yield from each fishery. This final rule achieves the National Standard 1 directives of both preventing overfishing while allowing fishermen a reasonable opportunity to harvest the stock.

Finally, Amendment 7 describes impacts to non-target species under each alternative. NMFS agrees that eliminating overfishing on bigeye tuna in the WCPO may have ancillary benefits to the ecosystem and U.S. fishermen, but the effects are not quantifiable. NMFS found that there would be no significant effects of the action (negative or positive) on the environment.

See also the response to Comment 13.

Comment 21: The EA unlawfully fails to address whether the proposed rule would violate other WCPFC CMMs that restrict catch of fish, including sharks.

Response: See the response to Comments 3, 5, and 6.

Comment 22: Incidental take of endangered marine mammals in commercial fisheries requires a negligible impact determination and other requirements to be met before authorization under the MMPA section 101(a)(5)(E). The MMPA requires fishery monitoring



at levels to produce statistically reliable estimates of marine mammal serious injury and mortality. In the deep-set longline fishery, observer coverage should be increased to 100 percent. This level of monitoring has already been recommended in the United States Fish and Wildlife Service (USFWS) 2012 biological opinion for the Hawaii pelagic longline fisheries, both shallow- and deep-set. The proposed rule's increase of fishing effort in this fishery in the absence of MMPA authorization could lead to illegal incidental take.

Response: In a Biological Opinion dated September 19, 2014, NMFS concluded that the longline fishery is not likely to jeopardize the continued existence of ESA-listed humpback whales, sperm whales, the MHI insular false killer whale distinct population segment (DPS), North Pacific loggerhead DPS, leatherback sea turtles, olive ridley sea turtles, green sea turtles, and the Indo-west Pacific scalloped hammerhead DPS. NMFS based this conclusion on a careful assessment of the effects of the action, together with the environmental baseline and the cumulative effects. Where appropriate, an incidental take statement allows for the incidental taking of ESA-listed species during the course of fishing operations, where consistent with specified reasonable and prudent measures and terms and conditions.

Moreover, on October 10, 2014, NMFS authorized a permit under the MMPA section 101(a)(5)(E), addressing the fishery's interactions with depleted stocks of marine mammals. The permit authorizes the incidental, but not intentional, taking of ESA-listed humpback whales (Central North Pacific (CNP) stock), sperm whales (Hawaii stock), and MHI insular false killer whales. In authorizing this permit, NMFS determined that incidental taking by the Hawaii longline fisheries will have a negligible impact on the affected stocks of marine mammals.

The USFWS provided conservation recommendations regarding the amount of observer coverage for the Hawaii-based deep-set longline fishery in its 2012 biological opinion (BiOp) (Biological Opinion of the USFWS for the Operation of Hawaii-based Pelagic Longline Fisheries, Shallow Set and Deep Set, Hawaii; January 6, 2012). As stated in the 2012 BiOp, conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat (e.g., to help implement recovery plans, or to collect information). The USFWS recommended that observer coverage for the deep-set fishery be increased, as funds are available, and that the amount of coverage be increased to 100 percent for vessels fishing within the range of the short-tailed albatross. However, NMFS is satisfied that 20 percent observer coverage is sufficient to

provide statistically reliable information with which to accurately assess the fishery's impacts on protected species. Moreover, whether or when to make changes to observer coverage is outside the scope of this rulemaking.

Comment 23: According to Amendment 7 and the EA, the most recent ESA consultation for longline fisheries in Guam and the CNMI was completed in 2001. Since then, loggerhead sea turtles - one of the sea turtle species with which the fisheries interact - have been listed as distinct populations segments (DPSs) under the ESA. Based on this information and likely other new information on the fisheries' interactions, NMFS must complete consultation on the impacts of the proposed rule on listed animals. If the fisheries are likely to harm migratory birds or marine mammals, NMFS should also make appropriate determinations under those laws.

Response: On September 22, 2011, NMFS and USFWS determined that the loggerhead sea turtle is composed of nine DPSs (76 FR 58868). Effective October 24, 2011, NMFS and USFWS listed four DPSs as threatened and five as endangered under the ESA. Specifically, NMFS listed the North Pacific loggerhead sea turtle DPS and South Pacific loggerhead sea turtle DPS as endangered and at risk of extinction. Due to geography and the operational area of historical longline fishing in and around the Marianas Archipelago, the effective population addressed in

the 2001 Biological Opinion for pelagic longline fisheries in Guam and the CNMI was the North Pacific DPS. Currently there is no U.S. longline fishing occurring in or near the Marianas Archipelago that may affect the North Pacific loggerhead DPS. This action analyzes fishing effort by U.S. longline vessels operating under agreements that, consistent with historical trends, will occur primarily on the high seas around the Hawaiian Archipelago. A no-jeopardy biological opinion completed on September 19, 2014, thoroughly analyzed the impacts of the continued operation of the deep-set fishery on the North Pacific loggerhead DPS. As part of its environmental baseline analysis, the biological opinion also considered impacts to the species from other domestic and international fisheries throughout the Western and Central Pacific Ocean.

Comment 24: Although imperfect, this action represents the best efforts of the Council and NMFS to achieve a complicated set of purposes, balancing U.S. law, international treaties, practicalities, and science, in a context in which the United States, no matter what actions it takes, cannot control the outcome or ensure success because of the substantial impact of large-scale foreign fisheries. As stated in the assessment document, the Hawaii-based commercial longline fisheries are one of "the most responsible fisheries in the world." Our fisheries are rigorously managed, monitored and enforced, and operate

under an extensive set of operational and management requirements and limits for the benefit of target and bycatch species, and for the protection of marine mammals, seabirds, and sea turtles.

Response: NMFS agrees that the management recommendations in Amendment 7 and this implementing final rule are based on the best scientific information available and is consistent with WCPFC conservation and management objectives, the Magnuson-Stevens Act, and other applicable laws.

Comment 25: Although the United States has a robust set of laws and regulatory programs to address and ensure sustainable fish stocks and fisheries, principally under the Magnuson-Stevens Act, it is well-established that the U.S.A. cannot end overfishing of bigeye tuna in the WCPO through unilateral actions, and unilateral suppression of U.S. commercial longline fishing targeting bigeye tuna would actually be counterproductive to conservation of bigeye tuna and other species.

Response: NMFS acknowledges the comment.

Comment 26: This action is more stringent than current international treaty requirements, and meets or exceeds applicable standards under the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA), the Magnuson-Stevens Act, and Section 113.

Response: This action is consistent with the statutes noted, as well as with the objectives of the CMMS to end overfishing of bigeye tuna. Also, see response to Comments 2 and 31.

Comment 27: The proposed regulations establish a new and unproven regulatory process requiring annual Council and NMFS analyses of complex information. Any failure in the proposed multi-step process could result in no acceptance of a specified fishing agreement, which would be catastrophic for the Hawaii-based longline fisheries.

Response: NMFS is sensitive to the potential economic impact that rejection of a specified fishing agreement may have on fishery participants. Nevertheless, the Magnuson-Stevens Act requires that the conservation needs of affected fishery stocks take priority over short-term economic interests. This principle is particularly important here, where bigeye tuna is currently subject to overfishing in the WCPO.

This final rule provides the ability for NMFS to monitor and take action in response to the best scientific information available, including new stock assessments and WCPFC conservation and management measures. It establishes an orderly process by which the Council and NMFS can monitor management agreements and take timely action to prevent overfishing while ensuring optimum yield on a continuing basis. The rule provides

deadlines to establish a schedule and flexibility to allow for contingencies. The process and procedures identified are necessary to ensure that the limited transfer of quota to U.S. fisheries is done responsibly with the conservation requirements of the pelagic stocks. Implementing agreements in a haphazard manner could result in increased overfishing pressure on bigeye tuna and loss of management controls. The availability of this review process is essential to the NMFS determination that the rule is consistent with the Magnuson-Stevens Act and other applicable law.

Comment 28: In the proposed rule, the notification (§ 665.819(c)(ii)) and appeal (§ 665.819(c)(8)) provisions would grant rights only to signatory territories, not the signatory vessel owners or their representative. This would violate due process for NMFS to enact a process for reviewing, approving, denying, or conditioning specified fishing agreements that failed to afford rights of notice, appeal, and hearing to all of the parties to such agreements.

Response: NMFS agrees that the proposed rule contained this unintended oversight. The final rule corrects the oversight by including vessel owners and their representatives in the notification and appeal processes.

Comment 29: The default result of any failure of the process of specifying an annual transfer limit should be

continuation of the previously existing annual limit. This approach would be consistent with existing federal administrative law under which invalid regulations generally result in reinstatement of the prior existing regulations, not a regulatory vacuum.

Response: As stated above, the Magnuson-Stevens Act requires that NMFS give priority to the conservation needs of fishery stocks over economic interests. Under this action, the Council and NMFS will review and specify annual catch or fishing effort limits including the amount of catch or effort allowed for transfer under specified fishing agreements on an annual basis. This review is independent of the Council and NMFS review of specified fishing agreements. The failure of the Council to recommend, or NMFS to approve, an annual allocation limit that meets the requirements of the Magnuson-Stevens Act or other applicable law will require that no allocation limit be approved for that fishing year. This review and approval process is essential to the NMFS determination that the rule is consistent with the Magnuson-Stevens Act and other applicable law.

Comment 30: A multi-year transfer limit would add important predictability, while reducing the extreme time-sensitivity, risk, and administrative costs of annual reviews. Moreover, a multi-year limit is likely to be more consistent with the availability of new stock assessment information.



Response: This final rule allows NMFS to specify catch or fishing effort limits on an annual or multi-year basis, as recommended by the Council, and not exceeding WCPFC adopted limits. The action allows for multi-year annual limits if they are consistent with the conservation requirements of the stock. The Council must annually undertake their review and recommendation based on the best scientific information available relative to the stock status. If the WCPFC does not agree to limits for a western Pacific pelagic species that apply to a U.S. territory, the Council may recommend that NMFS set a catch or effort limit, and allocation limit that are consistent with the FEP, Magnuson-Stevens Act, and other applicable laws; this includes the possibility of multi-year limits. Nevertheless, the management framework requires the Council to review and make recommendations, and NMFS to take action on any existing or proposed catch or fishing effort limit and portion available for allocation, at least annually, to account for any changes to stock status, status of the fishery, and other relevant socio-economic factors, and to ensure consistency with all applicable laws. The annual review and recommendation includes any multi-year limit previously recommended and implemented. As stated above, annual review and action is necessary to ensure that the conservation needs of the stock take priority over economic considerations and to ensure that

management is based on the best available scientific information, as mandated by Magnuson-Stevens Act.

Comment 31: The proposed action includes adoption of both an annual longline catch limit for bigeye tuna of 2,000 mt per year for each of the territories, each with an annual transferable limit of 1,000 mt. These limits are substantially more stringent than the conservation measures adopted by the WCPFC and the mandate of Congress in Section 113.

Response: NMFS agrees that the action would implement catch limits for the territories that would otherwise not exist under CMM 2013-01. Also, see response to Comment 26.

Comment 32: Given increasingly stringent international requirements, were NMFS to subsequently impose lower transferable limits or to otherwise procedurally limit transfers, the result would both violate applicable law and do more harm than good for U.S. commercial fisheries, bigeye tuna in the WCPO, and conservation efforts generally.

Response: The proposed framework allows the Council and NMFS to set catch or effort limits for pelagic management unit species (MUS) based on the best scientific information available, including stock assessments, social and economic information, and consistency with the Magnuson-Stevens Act and international conservation and management measures to ensure

responsible fisheries development in the U.S. participating territories.

Comment 33: NMFS has no authority to adopt regulations that limit the transfer authority of a territory as proposed.

Response: NMFS is taking this action under the Magnuson-Stevens Act, which authorizes NMFS to promulgate regulations necessary or appropriate to implement a plan amendment, including regulations to establish a U.S. participating territory's transferable interest in fishery resources. Under the Magnuson-Stevens Act, the United States exercises sovereign rights and exclusive management authority over all fishery resources in the U.S. Exclusive Economic Zone (EEZ). However, the Magnuson-Stevens Act provides States and territories with limited authority to manage fisheries outside of their boundaries when authorized to do so by a fishery management plan, or with respect to their own vessels, when the State or territory's management is consistent with the relevant fishery management plan and regulations. This action would authorize U.S. territories to enter into agreements to transfer a limited amount of pelagic species quota to eligible U.S. fishing vessels.

See also the response to Comment 2.

Comment 34: The proposed rule appears to implement the 1,000-mt limit to ensure that sufficient catch quota is

available for territory fishery participants, but there is no factual basis to anticipate that there is a need to reserve 1,000 mt for territory fisheries. Even if there were a demonstrated need to reserve catch, it would be within the sovereign rights of each territory to evaluate and reserve appropriate catch quota in negotiating the terms of specified fishing agreements. Neither the Magnuson-Stevens Act nor other U.S. law or regulation grants to NMFS the right or obligation to enact catch limits for this purpose. Also, a 1,000-mt limit on transfers does not appear to be necessary to ensure sustainability, rather this limit has the appearance of increased stringency in regulating U.S. fisheries, but the reality of only handicapping U.S. fisheries relative to competing international fisheries.

Response: As stated above, the United States exercises exclusive management authority over fishery resources in the United States exclusive economic zone. This action would authorize U.S. participating territories to enter into agreements to transfer a limited amount of highly migratory species quota to eligible U.S. fishing vessels. The 1,000 mt-transferable limits in this final rule are based on the historical catches of bigeye made under a 2011-2012 agreement between American Samoa and the HLA. NMFS disagrees that the U.S. participating territories have independent authority under the

Magnuson-Stevens Act or WCPF Convention to evaluate and reserve catch of bigeye tuna; however, within the available transfer limits, the territories can negotiate the terms of specified fishing agreements, including the amount of catch to be transferred. This authority is subject to implementation under the Magnuson-Stevens Act, which provides oversight and management by the Council and NMFS. NMFS believes that 1,000-mt transferable limits helps achieve conservation and management objectives to eliminate overfishing on bigeye tuna, consistent with regional international objectives. Limiting overall harvest of bigeye tuna is important to eliminate overfishing and sustainably manage the stock in the WCPO; a transferable limit of 1,000 mt allows the territories to make allocation agreements with U.S. vessels to support fisheries development in the territories, while allowing the territories to retain a portion for utilization by their domestic fisheries.

See also the response to Comment 18.

Comment 35: Proposed regulations in § 665.819(c)(3)(iii) would authorize NMFS, in consultation with the Council, to impose "such additional terms and conditions" as it deems necessary for specified fishing agreements. This appears to be a catch-all provision designed to grant overly broad agency discretion to intervene in a commercial agreement between a

territory and the Hawaii longline fisheries. We are aware of no demonstrated need, purpose, or authority for this provision.

Response: Fishery management plan amendments and implementing regulations must be consistent with the Magnuson-Stevens Act, including the 10 National Standards. Under the Magnuson-Stevens Act, NMFS and the Council are responsible for ensuring that fish stocks are sustainably managed to prevent overfishing, while achieving on a continuing basis the optimum yield from each fishery. NMFS must give appropriate consideration to the economics of the fishery, including the commercial agreements referenced above, but these considerations do not take priority over the conservation needs of the stock (see 50 CFR 600.345(b)(1)). Moreover, NMFS notes that nothing in Section 113, WCPFC decisions, or the Magnuson-Stevens Act provides fishermen with an unbounded entitlement to purchase and harvest additional quota through territory agreements. NMFS cannot anticipate every possible term that parties may agree to in specified agreements. Accordingly, the narrowly-tailored regulatory provision provides that NMFS, in consultation with the Council, may recommend such additional terms and conditions as may be necessary to ensure compliance with the Magnuson-Stevens Act and other applicable laws, and is intended to ensure that the limited exchange of quota for pelagic management unit species, including bigeye tuna, does not jeopardize the

conservation needs of affected stocks. NMFS considers this regulatory provision, along with other precautionary measures implemented by this rule, to be vital to our determination that the action is consistent with the Magnuson-Stevens Act and other applicable laws.

Moreover, the Council's action expressly anticipated the above-referenced regulatory text. At the 154<sup>th</sup> Council Meeting in June 2012, the Council took action to recommend, in relevant part, that "the authority provided in this Pelagics FEP amendment may be subject to maximum annual limits, and any other terms or conditions, as recommended by the Council and approved by the Secretary of Commerce" (emphasis added). In the same action, the Council expressly authorized its Executive Director to review the regulations for consistency with the Council action before submitting them. The Executive Director discharged this responsibility in forwarding the regulations implementing Amendment 7, including the referenced regulatory text. This action was further affirmed by the Council's action at the 157<sup>th</sup> meeting in June 2013.

Comment 36: There should be no reduction in the recreational catch limits for tunas.

Response: This action does not create, affect, or change any recreational fishing catch limits for tuna anywhere.

Comment 37: Demand for bigeye tuna is so high that protection of the species for sustainable fisheries is critical. While NMFS does not expect the fishing limits to be reached in monitored areas, this highly migratory species should be consistently be protected throughout the western Pacific. We should monitor and support sustainable bigeye tuna and other pelagic fisheries, because we are one of the top consumers and beneficiaries of these fisheries, which is annually more than \$50 million industry. If we hope to continue to enjoy the economic and substantive benefits of these fish, we must do our part to protect them consistently.

Response: NMFS agrees that consistent international conservation and management of bigeye tuna in the WCPO is necessary to end overfishing. This action is consistent with CMM 2013-01 and its objective of ending overfishing of bigeye tuna in the WCPO. The Council and NMFS will determine any amount of quota available for transfer, on an annual basis, among U.S. territories and qualifying U.S. vessels after consideration of the conservation status and needs of the stock. See also the response to Comment 2.

Comment 38: Abolish longline fishing for bigeye tuna, as this is not a sustainable catch method and involves senseless bycatch. Reduce the bigeye tuna catch quota by 40 percent as recommended by scientists. We need to lower catch, eliminate



bycatch deaths, and stop longlining, drift nets, and other extreme fishing methods.

Response: This action does not change longline as an approved gear type to target pelagic fish in the WCPO. Other fishing methods are outside of the scope of this action.

See also the responses to Comments 2, 3, and 4.

Comment 39: All nations should adhere to reduced catch if we are to have any bigeye tuna left. It is in our interest as well as other fishing nations to do so. Also, there should be enforced rules for some areas that should be left off limits to fishing to help these fish recover their numbers.

Response: NMFS agrees that international compliance with the WCPFC CMM 2013-01 is necessary to eliminate overfishing on bigeye tuna in the WCPO and maintaining sustainable fisheries. Restricted fishing areas, while not part of this final rule, can be an important management measure in many fisheries, including U.S. pelagic longline fisheries that operate around Hawaii and American Samoa. The NOAA Office of Law Enforcement and the U.S. Coast Guard enforce fisheries laws of the U.S. in cooperation with State, territorial, and international partners.

See also the response to Comment 4.

Comment 40: Allowing bigeye tuna populations to recover will ensure its long-term viability in commercial fishing.

Response: NMFS agrees. National Standard 1 in the Magnuson-Stevens Act requires any management action to prevent overfishing while achieving optimum yield from each fishery for the U.S. fishing industry on a continual basis. This action is consistent with the Magnuson-Stevens Act and the WCPFC goal of ending overfishing on bigeye tuna.

Comment 41: Our own scientists say bigeye tuna is overfished and headed for extinction.

Response: The latest stock assessment (2014) and NMFS' status determination for bigeye tuna in the western and central Pacific Ocean concluded the stock is subject to overfishing, but not overfished or approaching an overfished condition. A stock is subject to overfishing when the level of fishing mortality or annual total catch jeopardizes the capacity to produce maximum sustainable yield (MSY) on a continuing basis. In contrast, a stock is overfished when its biomass has decreased below the level that jeopardizes the capacity of the stock to produce MSY on a continuing basis. Bigeye tuna in the WCPO is currently subject to international management under the WCPFC, which has established a goal of eliminating overfishing of the stock. The Pacific-wide stock of bigeye tuna is not listed as threatened or endangered under the Endangered Species Act.

Comment 42: There is concern about increased fishing effort in the Hawaii longline fishery. Since 2005, the number of hooks

that this fishery has set has increased by more than 14 million and projections indicate a total increase of nearly 44 percent by next year. In addition to bigeye tuna, a number of other species are currently experiencing overfishing and/or are in an overfished condition, including North Pacific striped marlin, which could see increased catches of 20 mt.

Response: NMFS disagrees that the Hawaii deep-set longline fishery will increase by the amount noted. During 2012, when the Hawaii deep-set longline fishery operated under the U.S. longline limit for WCPO bigeye tuna and a Section 113 catch agreement, the fishery deployed 43,965,781 hooks. Based on a statistical analysis of logbook data, NMFS expects fishing effort (sets and hooks) to increase slightly or remain similar to recent years, and it is quite possible that the current deep-set fleet of 124-129 vessels may be operating near its annual maximum in terms of hooks, sets, and trips. Based on effort trends, NMFS estimates that in the near future the fishery may deploy 46,117,532 hooks in a year. If this occurs, it would represent an approximately 4.9 percent increase over the 2012 effort level.

See also the response to Comment 3.

Comment 43: The proposed transfer agreements fail to implement the WCPFC's recommended catch limits of bigeye tuna and other conservation measures. Nothing in CMM 2013-01 supports

the NMFS claim that CMM 2013-01 does not establish annual bigeye tuna limits for the U.S. territories. On the contrary, CMM 2013-01 expressly provides that "attribution of catch and effort shall be to the flag State," in this case, the United States. The territories do not have additional bigeye tuna quotas under CMM 2013-01 that they can allocate to Hawaii-based longliners. The transfer agreements do not constitute charter arrangements under CMM 2011-05. Paragraph 7 in CMM 2013-01 does not create a loophole for U.S. flagged longline vessels to engage in unlimited fishing for bigeye tuna, contravening the WCPFC's intent to curb overfishing through the establishment of firm catch limits by flag.

Response: NMFS has already implemented the 3,763-mt catch limit for longline-caught bigeye tuna for the United States for 2014 (see 50 CFR 300.224) and will implement the U.S. longline catch limits for bigeye tuna specified in CMM 2013-01 for subsequent years in one or more separate rulemakings, as appropriate. Acting pursuant to the directive of Section 113, the Council also prepared an amendment and final rule that establishes a management framework for specifying catch and fishing effort limits and accountability measures for pelagic fisheries in the territories under the Magnuson-Stevens Act, including provisions that would allow for the limited transfer of quota from U.S. participating territories to eligible U.S.

fishing vessels, consistent with the conservation needs of the affected stocks. CMM 2013-01, paragraphs 7 and 41, provide that SIDS and PTs, including American Samoa, Guam, and the CNMI, are not subject to individual longline limits for bigeye tuna and does not require that bigeye tuna catch limits be established for the longline fisheries of PTs.

NMFS notes that CMM 2013-01 does not establish individual bigeye tuna catch quotas for the territories; it only establishes individual fishing limits for certain members that operate developed fisheries. Moreover, nothing in CMM 2013-01 or predecessor decisions of the WCPFC requires that vessels operate under charters for purposes of catch attribution. To the contrary, CMM 2011-01 incorporated paragraph 2 of CMM 2008-01, which provided that vessels operated under "charter, lease or similar mechanisms" by developing states and participating territories, as an integral part of their domestic fleet, would be considered to be vessels of the host island State or territory.

NMFS agrees that paragraph 7 of CMM 2013-01 should not create a loophole for U.S. longline vessels to engage in unlimited fishing for bigeye tuna. This action authorizes U.S. territories to transfer a limited amount of available bigeye quota to longline fisheries that have the capacity to harvest the stock, consistent with the conservation needs of the stock.

Comment 44: The proposed action will allow for an increase in catch beyond the U.S. bigeye tuna catch limit recently agreed to in the WCPFC under CMM 2013-01 and could increase tension among WCPFC member States and undermine progress toward the negotiation of further necessary reductions in fishing mortality, possibly undermining the leadership role of the United States in conservation efforts.

Response: NMFS is dedicated to U.S. management and conservation of the WCPO bigeye tuna and the work of the WCPFC, and does not believe this final rule will adversely affect the role of the United States in the WCPFC. NMFS considered and analyzed impacts of the action on bigeye tuna with all other sources of fishing mortality, and on the premise that the U.S. fisheries must continue to comply with applicable international conservation and management measures. This final rule will not result in significant adverse impacts to bigeye tuna, or prevent management measures from improving the status of bigeye tuna in the WCPO. CMM 2013-01 does not provide individual limits for annual catch of bigeye tuna for the SIDS and PTs, but NMFS acknowledges that there is potential for increased bigeye tuna catches by these countries through vessel chartering or similar mechanisms, including catch attribution programs. Nevertheless, an increase in vessel chartering by other members was not observed during the three years (2011-2013) of the longline

fishery's operation under Section 113, and we do not anticipate changes as a result of this final rule.

See also the responses to Comments 2 and 4.

Comment 45: CMM 2013-01 does not prescribe the transfer of catch limits from one State to another, nor does it allow for the transfer of catch limits from one territory to a State. To be consistent with U.S. commitments and legally-binding agreements, NMFS should specify criteria for fishing agreements that require all longline vessels to be based domestically in the territory in question, only catch the territory's bigeye tuna limit within the EEZ around each territory, and support the territories' development of its domestic fisheries. In addition, NMFS should include accountability measures that report on how such vessels have supported the development of the territory's domestic fisheries.

Response: Section 113, as amended, required the Council to develop and transmit a fishery management plan amendment and regulations, no later than December 31, 2013, that establish a framework for transferring territory catch or effort limits to eligible U.S. fishing vessels in exchange for payments into the Sustainable Fisheries Fund to support fisheries development projects in the territories. This final rule implements these provisions, as established in Amendment 7. In developing Amendment 7, the Council identified and analyzed a range of

alternatives to achieve the objective of Section 113, consistent with the Magnuson-Stevens Act and other applicable laws. NMFS is bound to work within the Council process established under the Magnuson-Stevens Act, and must approve the Council's recommendation unless it finds such recommendation to be inconsistent with the Magnuson-Stevens Act or other laws. Under the provisions of the Council's proposal, specified fishing agreements must either provide for landing or offloading of catch in the ports of the relevant territory or provide funds to the Western Pacific Sustainable Fisheries Fund to support fisheries development in that territory. NMFS is unaware of any legal impediment to approval and implementation of these conditions.

#### Changes to the Proposed Rule

In the proposed rule, the provisions for notification in § 665.819(c)(3)(ii) and appeal in § 665.819(c)(8) regarding agency decisions on specified fishing agreements would have granted administrative appeal rights to the signatory territories, but not to the signatory vessel owners or their representatives. This unintended oversight, if implemented, would have denied procedural rights of review to all of the signatory parties to specified fishing agreements. The final rule corrects the oversight by including vessel owners and their representatives in those provisions.



In the proposed rule, the provisions in § 665.819(b)(2) and (b)(3) related to setting catch or fishing effort limit specifications and allocation portions for the fishing year, and the provisions in § 665.819(d)(1) regarding action when territorial catch or fishing effort limits or allocation limits are projected to be reached, each included references to the use of the Federal Register and other reasonable means to notify the public. While NMFS will endeavor to use other reasonable means of notifying permit holders and public of these provisions, the only required means of notification is publication in the Federal Register. The final rule has been updated to reflect this clarification.

NMFS is making several technical clarifications in this final rule. In the proposed rule at § 665.819, paragraph (c)(1)(ii) requires a specified fishing agreement to identify the "amount" of western Pacific pelagic MUS to which the fishing agreement applies. Because WCPFC catch limits and related NMFS catch specifications refer to the weight of fish, not the number or other measure, NMFS added "(weight)" after "amount" to clarify the requirement.

NMFS is also changing the mailing addresses and phone numbers for several NMFS offices in the regulations for Pacific Island and international fisheries and in the general Magnuson-Stevens Act provisions. After the proposed rule was published,

the NMFS Pacific Islands Regional Office, Pacific Islands Fisheries Science Center, and the Pacific Islands Division of NOAA Law Enforcement moved their offices to a new location. Accordingly, this final rule revises addresses and contact information in §§ 300.31, 300.211, 300.219, 600.502, and 665.12.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA.

#### Classification

The Regional Administrator, Pacific Islands Region, NMFS, has determined that this action is necessary for the conservation and management of Pacific Island pelagic fisheries, and that it is consistent with Amendment 7, the Magnuson-Stevens Act, and other applicable laws.

#### Administrative Procedure Act

NMFS has determined that good cause exists to waive the 30-day delay in effectiveness of this rule because, under 5 U.S.C. 553(d), this rule relieves a restriction on the regulated community, and requiring a 30-day delay would be contrary to the public interest. This rule requires NMFS to begin attributing longline caught bigeye to the U.S. territory to which a fishing agreement applies seven days before the date NMFS projects the

fishery to reach the U.S. bigeye tuna limit. NMFS now projects the current 3,763 metric ton limit will be reached in early- to mid-November 2014. NMFS must determine, in early November 2014, the amount of unused U.S. bigeye tuna quota, and begin attributing catch made by U.S. vessels identified in qualifying fishing agreement to the U.S. territory to which the agreement applies. If the effectiveness of this final rule is delayed past the date the bigeye tuna limit is reached, NMFS would be required to publish a temporary rule that restricts the Hawaii-based longline fishery until this final rule is effective, after which NMFS would remove the restrictions. If the rule's effectiveness is delayed, fisheries that might otherwise remain unrestricted may prematurely be restricted based on the lower U.S. limit having been reached. By implementing this rule immediately, it allows the fishery to continue fishing without the uncertainty or disruption of a potential closure.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Certification under the Regulatory Flexibility Act

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule and specifications stage that this action would not have a

significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule and specifications, and does not repeat it here. NMFS received no comments regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

#### Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) under Office of Management and Budget (OMB) Control Number 0648-0689. Specifically, the owners of U.S. pelagic longline fishing vessels, or their designated representatives, may enter into specified fishing agreements with the governments of American Samoa, Guam, or the Northern Mariana Islands, and this collection-of-information covers the preparation and submission of the agreement documents. The public reporting burden for a specified fishing agreement is estimated to average six hours per response, and two hours per appeal, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. NMFS expects to receive up to nine applications for specified fishing agreements each year, and one appeal per year, for a total maximum reporting burden of 56 hours per year. NMFS received no comments on the collection-

of-information requirements in the proposed rule. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to the NMFS Regional Administrator (see ADDRESSES), and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

##### 50 CFR Part 600

Administrative practice and procedure, Reporting and recordkeeping requirements.

50 CFR Part 665

Administrative practice and procedure, American Samoa,  
Commercial fishing, Fisheries, Guam, Hawaii, Northern Mariana  
Islands, Western and Central Pacific Fisheries Commission.

Dated: October 23, 2014

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS is amending  
15 CFR part 902, and 50 CFR parts 300, 600, and 665 as follows:

Title 15

PART 902--NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE  
PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as  
follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, amend the table in paragraph (b), under the entry "50 CFR" by adding an entry for § 665.819 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
50 CFR	
* * * * *	
665.819	-0689
* * * * *	

Title 50

PART 300--INTERNATIONAL FISHERIES REGULATIONS

3. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 et seq., 16 U.S.C. 1801 et seq., 16 U.S.C. 5501 et seq., 16 U.S.C. 2431 et seq., 31 U.S.C. 9701 et seq.

4. In § 300.31, revise the definition of "Regional Administrator" to read as follows:

§ 300.31 Definitions.

\* \* \* \* \*

Regional Administrator means the Regional Administrator,  
Pacific Islands Region, NMFS, 1845 Wasp Blvd., Bldg. 176,  
Honolulu, HI 96818, facsimile: 808-725-5215, or a designee.

\* \* \* \* \*

5. In § 300.211, revise the definitions of "Pacific Islands  
Regional Administrator" and "Special Agent-In-Charge (or SAC)"  
to read as follows:

§ 300.211 Definitions.

\* \* \* \* \*

Pacific Islands Regional Administrator means the Regional  
Administrator, Pacific Islands Region, NMFS, 1845 Wasp Blvd.,  
Bldg. 176, Honolulu, HI 96818, or a designee.

\* \* \* \* \*

Special Agent-In-Charge (or SAC) means the Special-Agent-  
In-Charge, NOAA Office of Law Enforcement, Pacific Islands  
Division, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; tel:  
808-725-6100; facsimile: 808-725-6199; e-mail: [pidvms@noaa.gov](mailto:pidvms@noaa.gov),  
or a designee.

\* \* \* \* \*

6. In § 300.219, revise paragraph (a) to read as follows:  
§ 300.219 Vessel monitoring system.

(a) SAC and VMS Helpdesk contact information and business  
hours. For the purpose of this section, the following contact  
information applies:



(1) SAC. Address: 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808-725-6100; facsimile: 808-725-6199; e-mail: pidvms@noaa.gov; business hours: Monday through Friday, except Federal holidays, 8 a.m. to 4:30 p.m., Hawaii Standard Time.

(2) VMS Helpdesk. Telephone: 888-219-9228; e-mail: ole.helpdesk@noaa.gov; business hours: Monday through Friday, except Federal holidays, 7 a.m. to 11 p.m., Eastern Time.

\* \* \* \* \*

7. In § 300.224, remove paragraph (g) and revise paragraphs (d) and (f)(1)(iv) to read as follows:

§ 300.224 Longline fishing restrictions.

\* \* \* \* \*

(d) Exception for bigeye tuna caught by vessels included in specified fishing agreements under § 665.819(c) of this title.

Bigeye tuna caught by a vessel that is included in a specified fishing agreement under § 665.819(c) of this title will be attributed to the longline fishery of American Samoa, Guam, or the Northern Mariana Islands, according to the terms of the agreement to the extent the agreement is consistent with § 665.819(c) of this title and other applicable laws, and will not be counted against the limit, provided that:

(1) The start date specified in § 665.819(c)(9)(i) of this title has occurred or passed; and

(2) NMFS has not made a determination under § 665.819(c)(9)(iii) of this title that the catch of bigeye tuna exceeds the limit allocated to the territory that is a party to the agreement.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iv) Bigeye tuna caught by longline gear may be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in a specified fishing agreement under § 665.819(c) of this title, if the agreement provides for bigeye tuna to be attributed to the longline fishery of American Samoa, Guam, or the Northern Mariana Islands, provided that:

(A) The start date specified in § 665.819(c)(9)(i) of this title has occurred or passed; and

(B) NMFS has not made a determination under § 665.819(c)(9)(iii) of this title that the catch of bigeye tuna exceeds the limit allocated to the territory that is a party to the agreement.

\* \* \* \* \*

#### PART 600--MAGNUSON-STEVENSON ACT PROVISIONS

8. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

9. In § 600.502, amend Table 1 by revising the entries for "Administrator, Pacific Islands Region" under the heading "NMFS regional administrators," and "Director, Pacific Islands Fisheries Science Center" under the heading "NMFS science and research directors" to read as follows:

§ 600.502 Vessel reports.

\* \* \* \* \*

Table 1 to § 600.502--Addresses

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
* * * * *		
Administrator, Pacific Islands Region, National Marine Fisheries Service, NOAA, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818	Director, Pacific Islands Fisheries Science Center, National Marine Fisheries Service, NOAA, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818	* * * * *

\* \* \* \* \*

#### PART 665--FISHERIES IN THE WESTERN PACIFIC

10. The authority citation for part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

11. In § 665.12, revise the definitions of "Pacific Islands Regional Office (PIRO)" and "Special Agent-In-Charge" to read as follows:

§ 665.12 Definitions.

\* \* \* \* \*

Pacific Islands Regional Office (PIRO) means the headquarters of the Pacific Islands Region, NMFS, located at 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone number: 808-725-5000.

\* \* \* \* \*

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, located at 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone number: 808-725-6100, or a designee.

\* \* \* \* \*

12. In § 665.800, add definitions of "Effective date," "U.S. participating territory," and "WCPFC" in alphabetical order to read as follows:

§ 665.800 Definitions.

\* \* \* \* \*

Effective date means the date upon which the Regional Administrator provides written notice to the authorized official or designated representative of the U.S. participating territory that a specified fishing agreement meets the requirements of this section.

\* \* \* \* \*

U.S. participating territory means a U.S. participating territory to the Convention on the Conservation and Management

of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (including any annexes, amendments, or protocols that are in force, or have come into force, for the United States), and includes American Samoa, Guam, and the Northern Mariana Islands.

\* \* \* \* \*

WCPFC means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, including its employees and contractors.

\* \* \* \* \*

13. In § 665.802, add paragraph (o) to read as follows:

§ 665.802 Prohibitions.

\* \* \* \* \*

(o) Use a fishing vessel to retain on board, transship, or land pelagic MUS captured by longline gear in the WCPFC Convention Area, as defined in § 300.211 of this title, in violation of any restriction announced in accordance with § 665.819(d)(2).

\* \* \* \* \*

14. Add § 665.819 to subpart F to read as follows:

§ 665.819 Territorial catch and fishing effort limits.

(a) General. (1) Notwithstanding § 665.4, if the WCPFC agrees to a catch or fishing effort limit for a stock of western Pacific pelagic MUS that is applicable to a U.S. participating

territory, the Regional Administrator may specify an annual or multi-year catch or fishing effort limit for a U.S.

participating territory, as recommended by the Council, not to exceed the WCPFC adopted limit. The Regional Administrator may authorize such U.S. participating territory to allocate a portion, as recommended by the Council, of the specified catch or fishing effort limit to a fishing vessel or vessels holding a valid permit issued under § 665.801 through a specified fishing agreement pursuant to paragraph (c) of this section.

(2) If the WCPFC does not agree to a catch or fishing effort limit for a stock of western Pacific pelagic MUS applicable to a U.S. participating territory, the Council may recommend that the Regional Administrator specify such a limit that is consistent with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws. The Council may also recommend that the Regional Administrator authorize a U.S. participating territory to allocate a portion of a specified catch or fishing effort limit to a fishing vessel or vessels holding valid permits issued under § 665.801 through a specified fishing agreement pursuant to paragraph (c) of this section.

(3) The Council shall review any existing or proposed catch or fishing effort limit specification and portion available for allocation at least annually to ensure consistency with the

Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws. Based on this review, at least annually, the Council shall recommend to the Regional Administrator whether such catch or fishing effort limit specification or portion available for allocation should be approved for the next fishing year.

(4) The Regional Administrator shall review any Council recommendation pursuant to paragraph (a) of this section and, if determined to be consistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions, and other applicable laws, shall approve such recommendation. If the Regional Administrator determines that a recommendation is inconsistent with the Pelagics FEP, Magnuson-Stevens Act, WCPFC decisions and other applicable laws, the Regional Administrator will disapprove the recommendation and provide the Council with a written explanation of the reasons for disapproval. If a catch or fishing effort limit specification or allocation limit is disapproved, or if the Council recommends and NMFS approves no catch or fishing effort limit specification or allocation limit, no specified fishing agreements as described in paragraph (c) of this section will be accepted for the fishing year covered by such action.

(b) Procedures and timing. (1) After receiving a Council recommendation for a catch or fishing effort limit

specification, or portion available for allocation, the Regional Administrator will evaluate the recommendation for consistency with the Pelagics FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

(2) The Regional Administrator will publish in the Federal Register a notice and request for public comment of the proposed catch or fishing effort limit specification and any portion of the limit that may be allocated to a fishing vessel or vessels holding a valid permit issued under § 665.801.

(3) The Regional Administrator will publish in the Federal Register, a notice of the final catch or fishing effort limit specification and portion of the limit that may be allocated to a fishing vessel or vessels holding valid permits issued under § 665.801. The final specification of a catch or fishing effort limit will also announce the deadline for submitting a specified fishing agreement for review as described in paragraph (c) of this section. The deadline will be no earlier than 30 days after the publication date of the Federal Register notice that specifies the final catch or fishing effort limit and the portion of the limit that may be allocated through a specified fishing agreement.

(c) Specified fishing agreements. A specified fishing agreement means an agreement between a U.S. participating territory and the owner or a designated representative of a



fishing vessel or vessels holding a valid permit issued under § 665.801 of this part. An agreement provides access to an identified portion of a catch or fishing effort limit and may not exceed the amount specified for the territory and made available for allocation pursuant to paragraph (a) of this section. The identified portion of a catch or fishing effort limit in an agreement must account for recent and anticipated harvest on the stock or stock complex or fishing effort, and any other valid agreements with the territory during the same year not to exceed the territory's catch or fishing effort limit or allocation limit.

(1) An authorized official or designated representative of a U.S. participating territory may submit a complete specified fishing agreement to the Council for review. A complete specified fishing agreement must meet the following requirements:

(i) Identify the vessel(s) to which the fishing agreement applies, along with documentation that such vessel(s) possesses a valid permit issued under § 665.801;

(ii) Identify the amount (weight) of western Pacific pelagic MUS to which the fishing agreement applies, if applicable;

(iii) Identify the amount of fishing effort to which the fishing agreement applies, if applicable;

(iv) Be signed by an authorized official of the applicable U.S. participating territory, or designated representative;

(v) Be signed by each vessel owner or designated representative; and

(vi) Satisfy either paragraph (c)(1)(vi)(A) or (B) of this section:

(A) Require the identified vessels to land or offload catch in the ports of the U.S. participating territory to which the fishing agreement applies; or

(B) Specify the amount of monetary contributions that each vessel owner in the agreement, or his or her designated representative, will deposit into the Western Pacific Sustainable Fisheries Fund.

(vii) Be consistent with the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws; and

(viii) Shall not confer any right of compensation to any party enforceable against the United States should action under such agreement be prohibited or limited by NMFS pursuant to its authority under Magnuson-Stevens Act, or other applicable laws.

(2) Council review. The Council, through its Executive Director, will review a submitted specified fishing agreement to ensure that it is consistent with paragraph (1) of this section. The Council will advise the authorized official or designated

representative of the U.S. participating territory to which the agreement applies of any inconsistency and provide an opportunity to modify the agreement, as appropriate. The Council will transmit the complete specified fishing agreement to the Regional Administrator for review.

(3) Agency review. (i) Upon receipt of a specified fishing agreement from the Council, the Regional Administrator will consider such agreement for consistency with paragraph (c)(1) of this section, the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws.

(ii) Within 30 calendar days of receipt of the fishing agreement from the Council, the Regional Administrator will provide the authorized official or designated representative of the U.S. participating territory to which the agreement applies and the signatory vessel owners or their designated representatives with written notice of whether the agreement meets the requirements of this section. The Regional Administrator will reject an agreement for any of the following reasons:

(A) The agreement fails to meet the criteria specified in this subpart;

(B) The applicant has failed to disclose material information;

(C) The applicant has made a material false statement related to the specified fishing agreement;

(D) The agreement is inconsistent with the Pelagics FEP, implementing regulations, the Magnuson-Stevens Act, or other applicable laws; or

(E) The agreement includes a vessel identified in another valid specified fishing agreement.

(iii) The Regional Administrator, in consultation with the Council, may recommend that specified fishing agreements include such additional terms and conditions as are necessary to ensure consistency with the Pelagics FEP and implementing regulations, the Magnuson-Stevens Act, and other applicable laws.

(iv) The U.S. participating territory must notify NMFS and the Council in writing of any changes in the identity of fishing vessels to which the specified fishing agreement applies within 72 hours of the change.

(v) Upon written notice that a specified fishing agreement fails to meet the requirements of this section, the Regional Administrator may provide the U.S. participating territory an opportunity to modify the fishing agreement within the time period prescribed in the notice. Such opportunity to modify the agreement may not exceed 30 days following the date of written notice. The U.S. participating territory may resubmit the agreement according to paragraph (c)(1) of this section.

(vi) The absence of the Regional Administrator's written notice within the time period specified in paragraph (c)(3)(ii) of this section or, if applicable, within the extended time period specified in paragraph (c)(3)(v) of this section shall operate as the Regional Administrator's finding that the fishing agreement meets the requirements of this section.

(4) Transfer. Specified fishing agreements authorized under this section are not transferable or assignable, except as allowed pursuant to paragraph (c)(3)(iv) of this section.

(5) A vessel shall not be identified in more than one valid specified fishing agreement at a time.

(6) Revocation and suspension. The Regional Administrator, in consultation with the Council, may at any time revoke or suspend attribution under a specified fishing agreement upon the determination that either: Operation under the agreement would violate the requirements of the Pelagics FEP or implementing regulations, the Magnuson-Stevens Act, or other applicable laws; or the U.S. participating territory fails to notify NMFS and the Council in writing of any changes in the identity of fishing vessels to which the specified fishing agreement applies within 72 hours of the change.

(7) Cancellation. The U.S. participating territory and the vessel owner(s), or designated representative(s), that are party to a specified fishing agreement must notify the Regional

Administrator in writing within 72 hours after an agreement is cancelled or no longer valid. A valid notice of cancellation shall require the signatures of both parties to the agreement. All catch or fishing effort attributions under the agreement shall cease upon the written date of a valid notice of cancellation.

(8) Appeals. An authorized official or designated representative of a U.S. participating territory or signatory vessel owners or their designated representatives may appeal the granting, denial, conditioning, or suspension of a specified fishing agreement affecting their interests to the Regional Administrator in accordance with the permit appeals procedures set forth in § 665.801(o) of this subpart.

(9) Catch or fishing effort attribution procedures. (i) For vessels identified in a valid specified fishing agreement that are subject to a U.S. limit and fishing restrictions set forth in 50 CFR part 300, subpart O, NMFS will attribute catch made by such vessels to the applicable U.S. participating territory starting seven days before the date NMFS projects the annual U.S. limit to be reached, or upon the effective date of the agreement, whichever is later.

(ii) For U.S. fishing vessels identified in a valid specified fishing agreement that are subject to catch or fishing effort limits and fishing restrictions set forth in this

subpart, NMFS will attribute catch or fishing effort to the applicable U.S. participating territory starting seven days before the date NMFS projects the limit to be reached, or upon the effective date of the agreement, whichever is later.

(iii) If NMFS determines catch or fishing effort made by fishing vessels identified in a specified fishing agreement exceeds the allocated limit, NMFS will attribute any overage of the limit back to the U.S. or Pacific island fishery to which the vessel(s) is registered and permitted in accordance with the regulations set forth in 50 CFR part 300, subpart O and other applicable laws.

(d) Accountability measures. (1) NMFS will monitor catch and fishing effort with respect to any territorial catch or fishing effort limit, including the amount of a limit allocated to vessels identified in a valid specified fishing agreement, using data submitted in logbooks and other information. When NMFS projects a territorial catch or fishing effort limit or allocated limit to be reached, the Regional Administrator shall publish notification to that effect in the Federal Register at least seven days before the limit will be reached.

(2) The notice will include an advisement that fishing for the applicable pelagic MUS stock or stock complex, or fishing effort, will be restricted on a specific date. The restriction may include, but is not limited to, a prohibition on retention,

closure of a fishery, closure of specific areas, or other catch or fishing effort restrictions. The restriction will remain in effect until the end of the fishing year.

(e) Disbursement of contributions from the Sustainable Fisheries Fund. (1) NMFS shall make available to the Western Pacific Fishery Management Council monetary contributions, made to the Fund pursuant to a specified fishing agreement, in the following order of priority:

(i) Project(s) identified in an approved Marine Conservation Plan (16 U.S.C. 1824) of a U.S. participating territory that is a party to a valid specified fishing agreement, pursuant to § 665.819(c); and

(ii) In the case of two or more valid specified fishing agreements in a fishing year, the projects listed in an approved Marine Conservation Plan applicable to the territory with the earliest valid agreement will be funded first.

(2) At least seven calendar days prior to the disbursement of any funds, the Council shall provide in writing to NMFS a list identifying the order of priority of the projects in an approved Marine Conservation Plan that are to be funded. The Council may thereafter revise this list.



[FR Doc. 2014-25610 Filed 10/24/2014 at 4:15 pm; Publication  
Date: 10/28/2014]